

109TH CONGRESS  
1ST SESSION

# H. R. 4572

To revise and extend the Export Administration Act of 1979.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2005

Mr. HYDE introduced the following bill; which was referred to the Committee  
on International Relations

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## A BILL

To revise and extend the Export Administration Act of 1979.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Export Administration  
5       Renewal Act of 2005”.

6       **SEC. 2. CONGRESSIONAL DECLARATION OF POLICY.**

7       Section 3(a) of the Export Administration Act of  
8       1979 (50 U.S.C. App. 2402(a)) is amended by adding at  
9       the end the following new paragraph:

10               “(15) It is the policy of the United States to  
11       utilize the analytic product of the United States in-

1 intelligence community with respect to the consider-  
2 ation of any proposed license under this Act.”.

3 **SEC. 3. GENERAL PROVISIONS.**

4 Section 4 of the Export Administration Act of 1979  
5 (50 U.S.C. App. 2403) is amended by adding at the end  
6 the following new subsection:

7 “(h) COMMODITY CLASSIFICATION REVIEW.—The  
8 President, in consultation with the Secretary and the  
9 heads of other appropriate departments and agencies,  
10 shall conduct a comprehensive review of the commodity  
11 classification process and the Export Control Classifica-  
12 tion Number (in this Act referred to as the ‘ECCN’) sys-  
13 tem, taking into account—

14 “(1) the potential relevance of industrial tech-  
15 nical literature to ECCN classifications;

16 “(2) the extent of review for ECCN classifica-  
17 tions;

18 “(3) consistency between United States ECCN  
19 definitions and multilateral export control regime  
20 control lists;

21 “(4) any other applicable laws such as the  
22 Arms Export Control Act; and

23 “(5) other appropriate considerations, including  
24 the global war on terror.”.

1 **SEC. 4. NATIONAL SECURITY CONTROLS.**

2 Section 5(f)(6) of the Export Administration Act of  
3 1979 (50 U.S.C. App. 2404(f)(6)) is amended by striking  
4 “Under Secretary of Commerce for Export Administra-  
5 tion” and inserting “Under Secretary of Commerce for In-  
6 dustry and Security”.

7 **SEC. 5. VIOLATIONS.**

8 Section 11 of the Export Administration Act of 1979  
9 (50 U.S.C. App. 2410) is amended—

10 (1) by striking subsections (a) and (b) and in-  
11 serting the following:

12 “(a) CRIMINAL PENALTIES.—

13 “(1) VIOLATIONS BY AN INDIVIDUAL.—Any in-  
14 dividual who willfully violates, conspires to violate, or  
15 attempts to violate any provision of this Act or any  
16 regulation, license, or order issued under this Act  
17 shall be fined up to 10 times the value of the exports  
18 involved or \$1,000,000, whichever is greater, impris-  
19 oned for not more than 10 years, or both, for each  
20 violation.

21 “(2) VIOLATIONS BY A PERSON OTHER THAN  
22 AN INDIVIDUAL.—Any person, other than an indi-  
23 vidual, who willfully violates, conspires to violate, or  
24 attempts to violate any provision of this Act or any  
25 regulation, license, or order issued under this Act  
26 shall be fined up to 10 times the value of the exports

1 involved or \$5,000,000, whichever is greater, for  
2 each violation.

3 “(b) FORFEITURE OF PROPERTY INTEREST AND  
4 PROCEEDS.—

5 “(1) FORFEITURE.—Any person who is con-  
6 victed under paragraph (1) or (2) of subsection (a)  
7 shall, in addition to any other penalty, forfeit to the  
8 United States—

9 “(A) any of that person’s security or other  
10 interest in, claim against, or property or con-  
11 tractual rights of any kind in the tangible items  
12 that were the subject of the violation;

13 “(B) any of that person’s security or other  
14 interest in, claim against, or property or con-  
15 tractual rights of any kind in the tangible prop-  
16 erty that was used in the export or attempt to  
17 export that was the subject of the violation; and

18 “(C) any of that person’s property consti-  
19 tuting, or derived from, any proceeds obtained  
20 directly or indirectly as a result of the violation.

21 “(2) PROCEDURES.—The procedures in any for-  
22 feiture under this subsection, and the duties and au-  
23 thority of the courts of the United States and the  
24 Attorney General with respect to any forfeiture ac-  
25 tion under this subsection, or with respect to any

1 property that may be subject to forfeiture under this  
2 subsection, shall be governed by the provisions of  
3 chapter 46 of title 18, United States Code (relating  
4 to criminal forfeiture), to the same extent as prop-  
5 erty subject to forfeiture under that chapter.”;

6 (2) in subsection (c), by striking paragraph (1)  
7 and inserting the following: “(1) The Secretary may  
8 impose a civil penalty of up to \$500,000 for each  
9 violation of a provision of this Act or any regulation,  
10 license, or order issued under this Act. A civil pen-  
11 alty under this paragraph may be in addition to, or  
12 in lieu of, any other liability or penalty which may  
13 be imposed for such a violation.”;

14 (3) by striking subsections (g) and (h) and in-  
15 serting the following:

16 “(g) VIOLATIONS DEFINED BY REGULATION.—Noth-  
17 ing in this section shall limit the authority of the Secretary  
18 to define by regulation violations under this Act.

19 “(h) EFFECT OF OTHER CONVICTIONS.—

20 “(1) DENIAL OF EXPORT PRIVILEGES.—Any  
21 person convicted of a violation described in para-  
22 graph (2) may, at the discretion of the Secretary, be  
23 denied export privileges under this Act for a period  
24 not to exceed 10 years from the date of the convic-  
25 tion. The Secretary may also revoke any export li-

1       cense under this Act in which such person had an  
2       interest at the time of the conviction.

3               “(2) VIOLATIONS.—The violations referred to in  
4       paragraph (1) are a violation of—

5               “(A) a provision of this Act;

6               “(B) a provision of the International  
7       Emergency Economic Powers Act (50 U.S.C.  
8       1701 et seq.);

9               “(C) section 793, 794, or 798 of title 18,  
10      United States Code;

11              “(D) section 4(b) of the Internal Security  
12      Act of 1950 (50 U.S.C. 783(b));

13              “(E) section 38 of the Arms Export Con-  
14      trol Act (22 U.S.C. 2778);

15              “(F) section 16 of the Trading with the  
16      Enemy Act (50 U.S.C. App. 16);

17              “(G) any regulation, license, or order  
18      issued under any provision of law listed in sub-  
19      paragraph (A), (B), (C), (D), (E), or (F);

20              “(H) section 371 or 1001 of title 18,  
21      United States Code, if in connection with the  
22      export of items subject to this Act or any regu-  
23      lation, license, or order issued under the Inter-  
24      national Emergency Economic Powers Act, or

1 the export of items controlled under the Arms  
2 Export Control Act;

3 “(I) section 175 of title 18, United States  
4 Code;

5 “(J) a provision of the Atomic Energy Act  
6 (42 U.S.C. 201 et seq.);

7 “(K) section 831 of title 18, United States  
8 Code; or

9 “(L) section 2332a of title 18, United  
10 States Code.

11 “(3) RELATED PERSONS.—The Secretary may  
12 exercise the authority under paragraph (1) with re-  
13 spect to any person related through affiliation, own-  
14 ership, control, or position of responsibility to a per-  
15 son convicted of any violation of a law set forth in  
16 paragraph (2), upon a showing of such relationship  
17 with the convicted person. The Secretary shall make  
18 such showing only after providing notice and oppor-  
19 tunity for a hearing.”; and

20 (4) by adding at the end the following new sub-  
21 section:

22 “(j) STATUTE OF LIMITATIONS.—

23 “(1) IN GENERAL.—Except as provided in para-  
24 graph (2), a proceeding in which a civil penalty or  
25 other administrative sanction is sought under sub-

1 section (c) may not be commenced more than 5  
2 years after the date on which the claim first ac-  
3 crued.

4 “(2) EXCEPTION.—

5 “(A) TOLLING.—In any case in which a  
6 criminal indictment in connection with actions  
7 constituting a violation under subsection (a) is  
8 returned within the time limits prescribed by  
9 law for the institution of such action, the limi-  
10 tation under paragraph (1) for commencing a  
11 proceeding to impose a civil penalty or other ad-  
12 ministrative sanction under this section shall,  
13 upon the return of the criminal indictment, be  
14 tolled against any person named as a defend-  
15 ant.

16 “(B) DURATION.—The tolling of the limi-  
17 tation with respect to a defendant under sub-  
18 paragraph (A) as a result of a criminal indict-  
19 ment shall continue for a period of 6 months  
20 beginning on the date on which the defendant  
21 is convicted pursuant to the criminal indict-  
22 ment, the indictment against the defendant is  
23 dismissed, or the criminal action has otherwise  
24 concluded.”.



1 **SEC. 6. UNITED STATES POLICY ON MULTILATERAL EX-**  
2 **PORT CONTROL REGIMES.**

3 The Export Administration Act of 1979 is amended  
4 by inserting after section 11C the following new section:

5 **“SEC. 11D. U.S. POLICY ON MULTILATERAL EXPORT CON-**  
6 **TROL REGIMES.**

7 “(a) MULTILATERAL EXPORT CONTROL REGIMES.—

8 “(1) GENERAL POLICY.—It is the policy of the  
9 United States to seek multilateral arrangements that  
10 support the national security objectives of the  
11 United States.

12 “(2) MULTILATERAL EXPORT CONTROL RE-  
13 GIMES.—In this section, the term ‘multilateral ex-  
14 port control regime’ means an international agree-  
15 ment or arrangement among two or more countries,  
16 including the United States, a purpose of which is  
17 to coordinate national export control policies of its  
18 members regarding certain items. The term includes  
19 regimes such as the Australia Group (AG), the  
20 Wassenaar Arrangement, the Missile Technology  
21 Control Regime (MTCR), and the Nuclear Suppliers  
22 Group Dual Use Arrangement (NSG).

23 “(3) OBJECTIVES.—It is the intent of the Con-  
24 gress that the United States seek to achieve the fol-  
25 lowing objectives with regard to multilateral export  
26 control regimes:

1 “(A) EXISTING REGIMES.—

2 “(i) PARTICIPATION.—Continue its  
3 active participation in existing multilateral  
4 export control regimes, in accordance with  
5 subsection (b).

6 “(ii) STRENGTHEN.—Seek to attain  
7 the cooperation of members of each exist-  
8 ing and future regime in implementing the  
9 standards outlined in subsection (c) for ef-  
10 fective national export control systems.

11 “(B) NEW REGIMES.—Consider participa-  
12 tion in additional multilateral export control re-  
13 gimes if such participation would serve the na-  
14 tional security interests of the United States.

15 “(C) REVIEW AND UPDATE.—Review and  
16 update multilateral regime export control lists  
17 with other members, taking into account—

18 “(i) national security concerns, includ-  
19 ing the global war on terror;

20 “(ii) the foreign availability of items;  
21 and

22 “(iii) the costs and benefits of con-  
23 trols.

1                   “(D) IMPLEMENTATION BY NONMEM-  
2                   BERS.—Encourage countries that are not mem-  
3                   bers of the multilateral export control regime—

4                   “(i) to strengthen their national ex-  
5                   port control regimes and improve enforce-  
6                   ment;

7                   “(ii) to adhere to the guidelines of the  
8                   appropriate multilateral export control re-  
9                   gime;

10                  “(iii) not to undermine an existing  
11                  multilateral export control regime by ex-  
12                  porting controlled items in a manner in-  
13                  consistent with the guidelines of the re-  
14                  gime; and

15                  “(iv) to work with member countries  
16                  in training government officials on the  
17                  principles and procedures for implementing  
18                  effective export controls.

19                  “(4) TRANSPARENCY OF MULTILATERAL EX-  
20                  PORT CONTROL REGIMES.—

21                  “(A) PUBLICATION OF INFORMATION ON  
22                  EACH EXISTING REGIME.—Not later than 120  
23                  days after the date of the enactment of this sec-  
24                  tion, the Secretary shall, for each multilateral  
25                  export control regime, to the extent that it is

1 not inconsistent with the arrangements of that  
2 regime (in the judgment of the Secretary of  
3 State) or with the national interest, publish in  
4 the Federal Register and post on the Depart-  
5 ment of Commerce website the following infor-  
6 mation with respect to that regime:

7 “(i) The purposes of the regime.

8 “(ii) The members of the regime.

9 “(iii) The export licensing policy of  
10 the regime.

11 “(iv) The items that are subject to ex-  
12 port controls under the regime, together  
13 with all related public notes, and all  
14 changes thereto.

15 “(v) Any countries, end uses, or end  
16 users that are subject to the export con-  
17 trols of the regime.

18 “(vi) Rules of interpretation.

19 “(vii) Major policy actions.

20 “(viii) The rules and procedures of  
21 the regime for establishing and modifying  
22 any matter described in clauses (i) through  
23 (vii).

24 “(B) NEW REGIMES.—Not later than 60  
25 days after the United States joins or organizes

1 a new multilateral export control regime, the  
2 Secretary shall, to the extent that it is not in-  
3 consistent with arrangements under that regime  
4 (in the judgment of the Secretary of State) or  
5 with the national interest, publish in the Fed-  
6 eral Register and post on the Department of  
7 Commerce website the information described in  
8 subparagraphs (i) through (viii) of subpara-  
9 graph (A) with respect to the regime.

10 “(C) PUBLICATION OF CHANGES.—Not  
11 later than 60 days after a multilateral export  
12 control regime adopts any change in the infor-  
13 mation published under this paragraph, the  
14 Secretary shall, to the extent not inconsistent  
15 with the arrangements under that regime (in  
16 the judgment of the Secretary of State) or the  
17 national interest, publish such changes in the  
18 Federal Register and post such changes on the  
19 Department of Commerce website.

20 “(b) STANDARDS FOR MULTILATERAL EXPORT CON-  
21 TROL REGIMES.—It is the intent of the Congress that the  
22 President take steps to establish the following features in  
23 any multilateral export control regime in which the United  
24 States is participating or may participate:

1           “(1) FULL MEMBERSHIP.—Supplier countries  
2           should be considered for membership of the regime  
3           based on their acting in accordance with the objec-  
4           tives and meeting the membership criteria of the re-  
5           gime.

6           “(2) EFFECTIVE IMPLEMENTATION.—The re-  
7           gime promotes implementation of the regime’s rules  
8           and guidelines.

9           “(3) PUBLIC UNDERSTANDING.—The regime  
10          seeks to enhance public understanding of the pur-  
11          pose and procedures of the regime.

12          “(4) EFFECTIVE INTERPRETATION PROCE-  
13          DURES.—The regime has procedures to promote the  
14          uniform and consistent interpretation of its rules  
15          and guidelines.

16          “(5) ENHANCED COOPERATION WITH REGIME  
17          NONMEMBERS.—There is agreement among the  
18          members of the regime—

19                 “(A) to cooperate with governments of  
20                 countries that are not members of the regime to  
21                 restrict the export of items controlled by the re-  
22                 gime; and

23                 “(B) to establish an ongoing mechanism in  
24                 the regime to coordinate planning and imple-

1           mentation of export control measures related to  
2           such cooperation.

3           “(6) PERIODIC HIGH LEVEL MEETINGS.—There  
4           are regular periodic meetings of high level represent-  
5           atives of the governments of countries that are mem-  
6           bers of the regime for the purpose of coordinating  
7           export control policies and issuing policy guidance to  
8           members of the regime.

9           “(7) COMMON LIST OF CONTROLLED ITEMS.—  
10          There is agreement on a common list of items con-  
11          trolled by the regime.

12          “(8) REGULAR UPDATES OF COMMON LIST.—  
13          There is a procedure for removing items from the  
14          list of controlled items when the control of such  
15          items no longer serves the objectives of the members  
16          of the regime, and for adding items to the list of  
17          controlled items when appropriate in light of the ob-  
18          jectives of the regime.

19          “(9) GLOBAL WAR ON TERROR.—There is  
20          agreement—

21                 “(A) to prevent the export or diversion of  
22                 sensitive items to terrorist individuals and  
23                 groups; and

1           “(B) to support the United States and its  
2           international partners in the global war on ter-  
3           ror.

4           “(10) COORDINATION OF LICENSE APPROVAL  
5           PROCEDURES.—There is coordination among the  
6           members of the regime regarding their national ex-  
7           port license approval procedures, practices, and  
8           standards.

9           “(11) UNDERCUTTING.—The regime establishes  
10          rules with respect to the approval of licenses for the  
11          export of any item that is controlled pursuant to the  
12          regime, in cases in which a member has denied an  
13          export license for such item to the particular end  
14          user for reasons that are relevant to the purposes of  
15          the regime.

16          “(12) INFORMATION SHARING.—There are pro-  
17          cedures for the coordination and exchange of infor-  
18          mation about export licensing among members of  
19          the regime, including—

20                 “(A) notification of the denial of licenses  
21                 to export sensitive items controlled under the  
22                 regime to countries that are not members of the  
23                 regime, in cases in which the reasons for denial  
24                 are relevant to the purposes of the regime; and



1                   “(B) notification of applications for li-  
2                   censes to export goods and technology that are  
3                   destined for terrorist organizations or individ-  
4                   uals.

5           “(c) STANDARDS FOR NATIONAL EXPORT CONTROL  
6 SYSTEMS.—It is the intent of the Congress that the Presi-  
7 dent take steps to attain the cooperation of members of  
8 each multilateral export control regime in implementing  
9 effective national export control systems in accordance  
10 with the following:

11           “(1) EXPORT CONTROL LAWS.—Enforcement  
12           authority, civil and criminal penalties, and statutes  
13           of limitations are sufficient to deter potential viola-  
14           tions and punish violators under the member’s ex-  
15           port control laws.

16           “(2) LICENSE APPROVAL PROCESS.—The sys-  
17           tem for evaluating export license applications in-  
18           cludes sufficient technical expertise to assess the li-  
19           censing status of exports and ensure the reliability  
20           of end users.

21           “(3) ENFORCEMENT.—The enforcement mecha-  
22           nism provides authority for trained enforcement offi-  
23           cers to investigate and prevent illegal exports.

1           “(4) DOCUMENTATION.—There is a system of  
2       export control documentation and verification with  
3       respect to controlled items.

4           “(5) INFORMATION.—There are procedures for  
5       the coordination and exchange of information con-  
6       cerning licensing, end users, and enforcement with  
7       other members of the multilateral export control re-  
8       gime.

9           “(6) RESOURCES.—The member has devoted  
10      adequate resources to administer and enforce effec-  
11      tively the authorities, systems, mechanisms, and pro-  
12      cedures described in paragraphs (1) through (5).

13      “(d) SUPPORT OF OTHER COUNTRIES’ EXPORT CON-  
14      TROL SYSTEMS.—The Secretary is encouraged to continue  
15      to—

16           “(1) participate in training of, and provide  
17      training to, officials of other countries on the prin-  
18      ciples and procedures for implementing effective ex-  
19      port controls; and

20           “(2) participate in any such training provided  
21      by other departments and agencies of the United  
22      States.

23      “(e) ANNUAL REPORTS TO CONGRESS.—

24           “(1) ON EACH MULTILATERAL EXPORT CON-  
25      TROL REGIME.—Not later than February 1 of each

1 year, the President shall submit to the Committee  
2 on Banking, Housing, and Urban Affairs of the Sen-  
3 ate and the Committee on International Relations of  
4 the House of Representatives a report evaluating—

5 “(A) the purpose and objectives of each  
6 multilateral export control regime;

7 “(B) the effectiveness of each multilateral  
8 export control regime, including an assessment  
9 of the steps undertaken pursuant to subsections  
10 (c) and (d), in meeting those objectives;

11 “(C) any proposals or actions made by the  
12 United States to change the regime’s control  
13 list;

14 “(D) the response or position of the other  
15 regime members to any such proposal or action  
16 made by the United States; and

17 “(E) the overall responsiveness of the re-  
18 gime to any such action or proposal made by  
19 the United States.

20 “(2) CLASSIFICATION.—The reports, or any  
21 part of the reports, under this subsection may be  
22 submitted in classified form to the extent the Presi-  
23 dent considers necessary.”.

1 **SEC. 7. ENFORCEMENT.**

2 Section 12 of the Export Administration Act of 1979  
3 (50 U.S.C. App. 2411) is amended—

4 (1) in subsection (a)—

5 (A) by striking paragraphs (1), (2), (3),  
6 and (4) and inserting the following:

7 “(a) GENERAL AUTHORITY.—(1) To the extent nec-  
8 essary or appropriate to the enforcement of this Act or  
9 to the imposition of any penalty, forfeiture, or liability  
10 arising under this Act—

11 “(A) the head of any department or agency ex-  
12 ercising any function under this Act (and officers or  
13 employees of such department or agency specifically  
14 designated by the head thereof) may conduct inves-  
15 tigations within the United States;

16 “(B) the Secretary of Homeland Security (and  
17 officers or employees of U.S. Immigration and Cus-  
18 toms Enforcement specifically designated by the Sec-  
19 retary of the Department of Homeland Security)  
20 and the Secretary (and officers and employees of the  
21 Office of Export Enforcement of the Department of  
22 Commerce specifically designated by the Secretary)  
23 may conduct investigations outside of the United  
24 States;

25 “(C) the head of any such department or agen-  
26 cy (and such officers or employees) may obtain in-

1 formation from, require reports or the keeping of  
2 records by, inspect the books, records, and other  
3 writings, premises, or property of, and take the  
4 sworn testimony of, any person;

5 “(D)(i) such officers or employees may admin-  
6 ister oaths or affirmations, and may by subpoena re-  
7 quire any person to appear and testify or to appear  
8 and produce books, records, and other writings, or  
9 both; and

10 “(ii) in the case of contumacy by, or refusal to  
11 obey a subpoena issued to, any such person, a dis-  
12 trict court of the United States, after notice to any  
13 such person and hearing, shall have jurisdiction to  
14 issue an order requiring such person to appear and  
15 give testimony or to appear and produce books,  
16 records, and other writings, or both, and any failure  
17 to obey such order of the court may be punished by  
18 such court as a contempt thereof; and

19 “(E) the Secretary (and officers or employees  
20 of the Department of Commerce designated by the  
21 Secretary) may conduct, outside the United States,  
22 pre-license investigations and post-shipment  
23 verifications of items licensed for export.

24 “(2)(A) Subject to subparagraph (B), U.S. Im-  
25 migration and Customs Enforcement and U.S. Cus-

1       toms and Border Protection are authorized, in the  
2       enforcement of this Act—

3               “(i) to search, detain (after search), and  
4       seize goods or technology at those places out-  
5       side the United States where such entities are  
6       authorized, pursuant to agreements or other ar-  
7       rangements with other countries, to perform en-  
8       forcement activities; and

9               “(ii) to conduct such activities at those  
10      ports of entry or exit from the United States  
11      where officers of U.S. Immigration and Cus-  
12      toms Enforcement and U.S. Customs and Bor-  
13      der Protection are authorized by law to conduct  
14      such activities.

15              “(B) An officer of U.S. Immigration and Cus-  
16      toms Enforcement or U.S. Customs and Border Pro-  
17      tection may do the following in carrying out enforce-  
18      ment authority under this Act:

19               “(i) Stop, search, and examine a vehicle,  
20      vessel, aircraft, or person on which or whom  
21      such officer has reasonable cause to suspect  
22      there are any goods or technology that has  
23      been, is being, or is about to be exported from  
24      the United States in violation of this Act.

1           “(ii) Search any package or container in  
2           which such officer has reasonable cause to sus-  
3           pect there are any goods or technology that has  
4           been, is being, or is about to be exported from  
5           the United States in violation of this Act.

6           “(iii) Detain (after search) or seize and se-  
7           cure for trial any goods or technology on or  
8           about such vehicle, vessel, aircraft, or person, or  
9           in such package or container, if such officer has  
10          probable cause to believe the goods or tech-  
11          nology has been, is being, or is about to be ex-  
12          ported from the United States in violation of  
13          this Act.

14          “(iv) Make arrests without warrant for any  
15          violation of this Act committed in his or her  
16          presence or view or if the officer has probable  
17          cause to believe that the person to be arrested  
18          has committed or is committing such a viola-  
19          tion.

20          “(C) The arrest authority conferred by sub-  
21          paragraph (B)(iv) is in addition to any arrest au-  
22          thority under other laws. U.S. Immigration and Cus-  
23          toms Enforcement and U.S. Customs and Border  
24          Protection may not detain for more than 20 days  
25          any shipment of goods or technology eligible for ex-

1 port without license application. In a case in which  
2 such detention is on account of a disagreement be-  
3 tween the Secretary and the head of any other de-  
4 partment or agency with export license authority  
5 under other provisions of law concerning the export  
6 license requirements for such goods or technology,  
7 such disagreement shall be resolved within that 20-  
8 day period. At the end of that 20-day period, U.S.  
9 Immigration and Customs Enforcement or U.S.  
10 Customs and Border Protection (as the case may  
11 be) shall either release the goods or technology, or  
12 seize the goods or technology as authorized by other  
13 provisions of law.

14 “(3)(A) Subject to subparagraph (B)—

15 “(i) the Secretary shall have the responsi-  
16 bility for the enforcement of section 8;

17 “(ii) in the enforcement of the other provi-  
18 sions of this Act, the Secretary is authorized to  
19 search, detain (after search), and seize goods or  
20 technology—

21 “(I) at those places within the United  
22 States other than those ports specified in  
23 paragraph (2)(A); and

24 “(II) at those places outside the  
25 United States where the Office of Export



1 Enforcement of the Department of Com-  
2 merce, pursuant to agreements or other ar-  
3 rangements with other countries, is author-  
4 ized to perform enforcement activities;

5 “(iii) the search, detention (after search),  
6 or seizure of goods or technology at those ports  
7 and places specified in paragraph (2)(A) may  
8 be conducted by officers or employees of the  
9 Department of Commerce designated by the  
10 Secretary, with the concurrence of U.S. Cus-  
11 toms and Border Protection; and

12 “(iv) enforcement activities conducted out-  
13 side the United States, except for pre-license in-  
14 vestigations and post-shipment verifications,  
15 shall be undertaken in coordination with U.S.  
16 Immigration and Customs Enforcement.

17 “(B) The Secretary may designate any em-  
18 ployee of the Office of Export Enforcement of the  
19 Department of Commerce to do the following in car-  
20 rying out the enforcement authority conferred by  
21 this Act:

22 “(i) Execute any warrant or other process  
23 issued by a court or officer of competent juris-  
24 diction.

1           “(ii) Make arrests without warrant for any  
2           offense against the United States committed in  
3           such officer’s presence or view or any felony of-  
4           fense against the United States if such officer  
5           has probable cause to believe that the person to  
6           be arrested has committed or is committing  
7           that felony offense.

8           “(iii) Carry firearms.

9           “(4) The authorities conferred by the Export  
10          Administration Renewal Act of 2005 under para-  
11          graph (3) shall be exercised consistent with guide-  
12          lines approved by the Attorney General.”;

13                 (B) by striking paragraphs (6) and (7);

14                 (C) by striking paragraph (8) and insert-  
15          ing the following:

16           “(6)(A) The Secretary, in consultation with the  
17          technical advisory committees established under sec-  
18          tion 5(h) and exporters, shippers, trade facilitators,  
19          freight forwarders, and reexporters representative of  
20          their respective industries, shall continue to publish  
21          and update ‘best practices’ guidelines to help those  
22          industries develop and implement, on a voluntary  
23          basis, effective export control programs in compli-  
24          ance with this Act.

1           “(B) The existence of an effective export com-  
 2           pliance program and high quality overall export com-  
 3           pliance efforts is one factor which ordinarily should  
 4           be accorded great weight as a mitigating factor in  
 5           civil penalty enforcement actions under this Act.

6           “(7) For purposes of this section, a reference to  
 7           the enforcement of this Act or to a violation of this  
 8           Act includes a reference to the enforcement or a vio-  
 9           lation of any regulation, order, or license issued  
 10          under this Act, and the enforcement or violation of  
 11          the Export Administration Regulations as main-  
 12          tained and amended under the authority of the  
 13          International Emergency Economic Powers Act (50  
 14          U.S.C. 1701 et seq.), or any order or license issued  
 15          pursuant to those regulations.”;

16           (2) in subsection (c)—

17                   (A) by striking “(c) CONFIDENTIALITY”  
 18                   and all that follows through paragraph (2) and  
 19                   inserting the following:

20           “(c) CONFIDENTIALITY OF INFORMATION.—

21                   “(1) EXEMPTIONS FROM DISCLOSURE.—

22                           “(A) INFORMATION OBTAINED ON OR BE-  
 23                           FORE JUNE 30, 1980.—Except as otherwise pro-  
 24                           vided by the third sentence of section 8(b)(2)  
 25                           and by section 11(c)(2)(C), information ob-

1           tained under this Act, or any predecessor stat-  
2           ute, on or before June 30, 1980, which is  
3           deemed confidential, including Shipper's Export  
4           Declarations, or with respect to which a request  
5           for confidential treatment is made by the per-  
6           son furnishing such information, shall not be  
7           subject to disclosure under section 552 of title  
8           5, United States Code, and such information  
9           shall not be published or disclosed, unless the  
10          Secretary determines that the withholding  
11          thereof is contrary to the national interest.

12               “(B) INFORMATION OBTAINED AFTER  
13          JUNE 30, 1980.—Except as otherwise provided  
14          by the third sentence of section 8(b)(2) and by  
15          section 11(c)(2)(C), information obtained under  
16          this Act after June 30, 1980, or under the Ex-  
17          port Administration Regulations as maintained  
18          and amended under the authority of the Inter-  
19          national Emergency Economic Powers Act (50  
20          U.S.C. 1701 et seq.), may be withheld from dis-  
21          closure only to the extent permitted by statute,  
22          except that information submitted or obtained  
23          in connection with an application for an export  
24          license, other export authorization (or record-  
25          keeping or reporting requirement), enforcement

1 activity, or other operations under this Act, or  
2 under the Export Administration Regulations  
3 as maintained and amended under the authority  
4 of the International Emergency Economic Pow-  
5 ers Act, including—

6 “(i) the export license or other export  
7 authorization itself,

8 “(ii) classification requests described  
9 in section 10(l),

10 “(iii) information or evidence obtained  
11 in the course of any investigation by an  
12 employee or officer of the Department of  
13 Commerce or any other department or  
14 agency of the United States,

15 “(iv) information obtained or fur-  
16 nished under section 5 or 6 in connection  
17 with any international agreement, treaty,  
18 or other obligation, and

19 “(v) information obtained in any in-  
20 vestigation of an alleged violation of sec-  
21 tion 8, except for information required to  
22 be disclosed by section 8(b)(2),

23 shall be withheld from public disclosure and  
24 shall not be subject to disclosure under section  
25 552 of title 5, United States Code, unless the

1 release of such information is determined by the  
2 Secretary to be in the national interest.

3 “(2) INFORMATION TO THE CONGRESS AND  
4 THE GAO.—

5 “(A) IN GENERAL.—Nothing in this Act  
6 shall be construed as authorizing the with-  
7 holding of information from the Congress or  
8 from the Government Accountability Office.

9 “(B) AVAILABILITY TO THE CONGRESS.—

10 “(i) IN GENERAL.—Any information  
11 obtained at any time under this Act or  
12 under any predecessor Act, or under the  
13 Export Administration Regulations as  
14 maintained and amended under the au-  
15 thority of the International Emergency  
16 Economic Powers Act, regarding the con-  
17 trol of exports, including any report or li-  
18 cense application required under this Act,  
19 shall be made available to any committee  
20 or subcommittee of Congress of appro-  
21 priate jurisdiction upon the request of the  
22 chairman or ranking minority member of  
23 such committee or subcommittee.

24 “(ii) PROHIBITION ON FURTHER DIS-  
25 CLOSURE.—No committee, subcommittee,

1 or Member of Congress shall disclose any  
2 information obtained under this Act, under  
3 any predecessor Act, or under the Export  
4 Administration Regulations as maintained  
5 and amended under the authority of the  
6 International Emergency Economic Powers  
7 Act, regarding the control of exports that  
8 is submitted on a confidential basis to the  
9 Congress under clause (i) unless the full  
10 committee to which the information is  
11 made available determines that the with-  
12 holding of that information is contrary to  
13 the national interest.

14 “(C) AVAILABILITY TO GAO.—

15 “(i) IN GENERAL.—Notwithstanding  
16 subparagraph (B), information described  
17 in paragraph (1) shall, consistent with the  
18 protection of intelligence, counterintel-  
19 ligence, and law enforcement sources,  
20 methods, and activities, as determined by  
21 the agency that originally obtained the in-  
22 formation, and consistent with the provi-  
23 sions of section 716 of title 31, United  
24 States Code, be made available only by  
25 that agency, upon request, to the Comp-

troller General of the United States or to any officer or employee of the Government Accountability Office authorized by the Comptroller General to have access to such information.

“(ii) PROHIBITION ON FURTHER DISCLOSURE.—No officer or employee of the Government Accountability Office shall disclose, except to the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.”; and

(B) in paragraph (3)—

(i) by striking “(3) Any” and inserting “(3) INFORMATION SHARING.—Any”;

(ii) by moving the text of paragraph (3) 2 ems to the right; and

(iii) by striking “Commissioner of Customs” each place it appears and inserting “Secretary of Homeland Security”; and

(3) by adding at the end the following new subsections:

“(f) FORFEITURE.—



1           “(1) IN GENERAL.—Any tangible items lawfully  
2 seized under subsection (a) by designated officers or  
3 employees shall be subject to forfeiture to the United  
4 States.

5           “(2) APPLICABLE LAWS.—Those provisions of  
6 law relating to—

7               “(A) the seizure, summary and judicial  
8 forfeiture, and condemnation of property for  
9 violations of the customs laws,

10              “(B) the disposition of such property or  
11 the proceeds from the sale thereof,

12              “(C) the remission or mitigation of such  
13 forfeitures, and

14              “(D) the compromise of claims,  
15 shall apply to seizures and forfeitures incurred, or  
16 alleged to have been incurred, under the provisions  
17 of this subsection, insofar as applicable and not in-  
18 consistent with this Act.

19           “(3) FORFEITURES UNDER CUSTOMS LAWS.—  
20 Duties that are imposed upon a customs officer or  
21 any other person with respect to the seizure and for-  
22 feiture of property under the customs laws may be  
23 performed with respect to seizures and forfeitures of  
24 property under this subsection by the Secretary or  
25 any officer or employee of the Department of Com-

1 merce that may be authorized or designated for that  
2 purpose by the Secretary (or by the Under Secretary  
3 for Border and Transportation Security of the De-  
4 partment of Homeland Security (formerly the Com-  
5 missioner of Customs) or any officer or employee of  
6 the Directorate for Border and Transportation Secu-  
7 rity (formerly the United States Customs Service)  
8 designated by the Under Secretary), or, upon the re-  
9 quest of the Secretary, by any other agency that has  
10 authority to manage and dispose of seized property.

11 “(g) UNDERCOVER INVESTIGATION OPERATIONS.—

12 “(1) USE OF FUNDS.—With respect to any un-  
13 dercover investigative operation conducted by the Of-  
14 fice of Export Enforcement of the Department of  
15 Commerce that is necessary for the detection and  
16 prosecution of violations of this Act—

17 “(A) funds made available for export en-  
18 forcement under this Act may be used to pur-  
19 chase property, buildings, and other facilities,  
20 and to lease equipment, conveyances, and space  
21 within the United States, without regard to sec-  
22 tions 1341 and 3324 of title 31, United States  
23 Code, section 8141 of title 40, United States  
24 Code, sections 3732(a) and 3741 of the Revised  
25 Statutes of the United States (41 U.S.C. 11(a))

1 and 22), and sections 304(a), 304A, 304B,  
2 304C, and 305 of the Federal Property and Ad-  
3 ministrative Services Act of 1949 (41 U.S.C.  
4 254 (a), 254b, 254c, 254d, and 255);

5 “(B) funds made available for export en-  
6 forcement under this Act may be used to estab-  
7 lish or to acquire proprietary corporations or  
8 business entities as part of an undercover oper-  
9 ation, and to operate such corporations or busi-  
10 ness entities on a commercial basis, without re-  
11 gard to sections 1341, 3324, and 9102 of title  
12 31, United States Code;

13 “(C) funds made available for export en-  
14 forcement under this Act and the proceeds from  
15 undercover operations may be deposited in  
16 banks or other financial institutions without re-  
17 gard to the provisions of section 648 of title 18,  
18 United States Code, and section 3302 of title  
19 31, United States Code; and

20 “(D) the proceeds from undercover oper-  
21 ations may be used to offset necessary and rea-  
22 sonable expenses incurred in such operations  
23 without regard to the provisions of section 3302  
24 of title 31, United States Code, if the Secretary  
25 certifies, in writing, that the action authorized

1           by subparagraph (A), (B), (C), or (D) for which  
2           the funds would be used is necessary for the  
3           conduct of the undercover operation.

4           “(2) DISPOSITION OF BUSINESS ENTITIES.—If  
5           a corporation or business entity established or ac-  
6           quired as part of an undercover operation has a net  
7           value of more than \$250,000 and is to be liquidated,  
8           sold, or otherwise disposed of, the Secretary shall re-  
9           port the circumstances to the Comptroller General of  
10          the United States as much in advance of such dis-  
11          position as the Secretary determines is practicable.  
12          The proceeds of the liquidation, sale, or other dis-  
13          position, after obligations incurred by the corpora-  
14          tion or business enterprise are met, shall be depos-  
15          ited in the Treasury of the United States as mis-  
16          cellaneous receipts. Any property or equipment pur-  
17          chased pursuant to paragraph (1) may be retained  
18          for subsequent use in undercover operations under  
19          this section. When such property or equipment is no  
20          longer needed, it shall be considered surplus and dis-  
21          posed of as surplus government property.

22          “(3) DEPOSIT OF PROCEEDS.—As soon as the  
23          proceeds from an undercover investigative operation  
24          of the Office of Export Enforcement of the Depart-  
25          ment of Commerce with respect to which an action

1 is authorized and carried out under this subsection  
2 are no longer needed for the conduct of such oper-  
3 ation, the proceeds or the balance of the proceeds re-  
4 maining at the time shall be deposited into the  
5 Treasury of the United States as miscellaneous re-  
6 ceipts.

7 “(4) AUDIT AND REPORT.—

8 “(A) AUDIT.—The Secretary shall conduct  
9 a detailed financial audit of each closed under-  
10 cover investigative operation of the Office of  
11 Export Enforcement of the Department of  
12 Commerce. Not later than 180 days after an  
13 undercover operation is closed, the Secretary  
14 shall submit to the Congress a report on the re-  
15 sults of the audit.

16 “(B) REPORT.—The Secretary shall sub-  
17 mit annually to Congress a report, which may  
18 be included in the annual report under section  
19 14, including the following information:

20 “(i) The number of undercover inves-  
21 tigative operations pending as of the end of  
22 the period for which the report is sub-  
23 mitted.

24 “(ii) The number of undercover inves-  
25 tigative operations commenced in the 1-

1 year period preceding the period for which  
2 the report is submitted.

3 “(iii) The number of undercover in-  
4 vestigative operations closed in the 1 year  
5 period preceding the period for which such  
6 report is submitted and, with respect to  
7 each such closed undercover operation, the  
8 results obtained and any civil claims made  
9 with respect to the operation.

10 “(5) DEFINITIONS.—For purposes of paragraph  
11 (4)—

12 “(A) the term ‘closed’, with respect to an  
13 undercover investigative operation, refers to the  
14 earliest point in time at which all criminal pro-  
15 ceedings (other than appeals) pursuant to the  
16 investigative operation are concluded, or covert  
17 activities pursuant to such operation are con-  
18 cluded, whichever occurs later; and

19 “(B) the terms ‘undercover investigative  
20 operation’ and ‘undercover operation’ mean any  
21 undercover investigative operation conducted by  
22 the Office of Export Enforcement of the De-  
23 partment of Commerce—

24 “(i) in which the gross receipts (ex-  
25 cluding interest earned) exceed \$25,000, or

1 expenditures (other than expenditures for  
2 salaries of employees) exceed \$75,000, and  
3 “(ii) which is exempt from section  
4 3302 or 9102 of title 31, United States  
5 Code,

6 except that clauses (i) and (ii) shall not apply  
7 with respect to the report to the Congress re-  
8 quired by paragraph (4)(B).

9 “(h) WIRETAPS.—Interceptions of communications in  
10 accordance with section 2516 of title 18, United States  
11 Code, are authorized to further the enforcement of this  
12 Act.

13 “(i) AUTHORIZATION FOR BUREAU OF INDUSTRY  
14 AND SECURITY.—The Secretary may authorize, without  
15 fiscal year limitation, the expenditure of funds transferred  
16 to, paid to, received by, or made available to the Bureau  
17 of Industry and Security of the Department of Commerce  
18 as a reimbursement in accordance with section 9703 of  
19 title 31, United States Code (as added by Public Law  
20 102–393).

21 “(j) EXPORT ENFORCEMENT ACCOUNT.—

22 “(1) ESTABLISHMENT.—There is established in  
23 the general fund of the Treasury a separate fund  
24 which shall be known as the ‘The BIS Export En-  
25 forcement Fund’. Notwithstanding any other provi-

1 sion of this Act, there shall be deposited as offset-  
2 ting receipts into the BIS Export Enforcement Fund  
3 amounts described in paragraph (2). Amounts in the  
4 BIS Export Enforcement Fund shall remain avail-  
5 able until expended.

6 “(2) AMOUNTS DESCRIBED.—The amounts de-  
7 scribed in this paragraph are civil penalties collected  
8 pursuant to regulations issued, maintained, or  
9 amended under the Act, the International Emer-  
10 gency Economic Powers Act, and any other statute  
11 pursuant to which the Bureau of Industry and Secu-  
12 rity of the Department of Commerce has the author-  
13 ity to impose civil penalties.

14 “(3) TRANSFERS TO OTHER ACCOUNTS.—The  
15 Secretary of the Treasury shall transfer from the  
16 BIS Export Enforcement Fund to the BIS Export  
17 Enforcement Account amounts equal to the expenses  
18 incurred by the Secretary of Commerce for activities  
19 that further the enforcement of the provisions of this  
20 Act. Such activities include—

21 “(A) the investigative travel expenses of  
22 agents of the Office of Export Enforcement of  
23 the Department of Commerce, including travel  
24 expenses for training courses for such agents;



1 “(B) storage costs for detained and seized  
 2 items related to investigations of violations of  
 3 this Act; and

4 “(C) the purchase, repair, and mainte-  
 5 nance of equipment necessary for the operations  
 6 of the Office of Export Enforcement of the De-  
 7 partment of Commerce.

8 “(4) AUTHORIZATION OF APPROPRIATIONS.—  
 9 There are authorized to be appropriated from the  
 10 BIS Export Enforcement Fund amounts not to ex-  
 11 ceed \$1,000,000 for each fiscal year to carry out the  
 12 purposes set forth in this subsection.

13 “(5) DEPOSITS INTO GENERAL FUND.—At the  
 14 end of each fiscal year, any unobligated amount in  
 15 excess of \$1,000,000 remaining in the BIS Export  
 16 Enforcement Fund shall be deposited in the general  
 17 fund of the Treasury.”.

18 **SEC. 8. ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-**  
 19 **VIEW.**

20 Section 13(a) of the Export Administration Act of  
 21 1979 (50 U.S.C. App. 2412(a)) is amended in the first  
 22 sentence by inserting “or under the Export Administration  
 23 Regulations as maintained and amended under the au-  
 24 thority of the International Emergency Economic Powers  
 25 Act (50 U.S.C. 1701 et seq.)” after “under this Act”.

1 **SEC. 9. ADMINISTRATIVE AND REGULATORY AUTHORITY.**

2 Section 15(a) of the Export Administration Act of  
3 1979 (50 U.S.C. App. 2414(a)) is amended in the first  
4 sentence—

5 (1) by striking “Under Secretary of Commerce  
6 for Export Administration” and inserting “Under  
7 Secretary of Commerce for Industry and Security”;  
8 and

9 (2) by striking “such other statutes” and all  
10 that follows through the end of the sentence and in-  
11 serting “other statutes that the Secretary has dele-  
12 gated to the Under Secretary of Commerce for In-  
13 dustry and Security or any predecessor (including  
14 the Under Secretary of Commerce for Export Ad-  
15 ministration and the Assistant Secretary of Com-  
16 merce for Trade Administration) as of the date of  
17 the enactment of the Export Administration Re-  
18 newal Act of 2005, or may delegate to the Under  
19 Secretary of Commerce for Industry and Security  
20 from time to time.”.

21 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

22 Section 18 of the Export Administration Act of 1979  
23 (50 U.S.C. App. 2417) is amended to read as follows:

24 “AUTHORIZATION OF APPROPRIATIONS

25 “SEC. 18. There are authorized to be appropriated  
26 to the Department of Commerce to carry out the purposes

1 of this Act such sums as may be necessary for each fiscal  
2 year.”.

3 **SEC. 11. TERMINATION DATE.**

4 Section 20 of the Export Administration Act of 1979  
5 (50 U.S.C. App. 2419) is amended to read as follows:

6 “TERMINATION DATE

7 “SEC. 20. The authority granted by this Act termi-  
8 nates at the end of the 2-year period beginning on the  
9 date of the enactment of the Export Administration Re-  
10 newal Act of 2005, except that the authority granted by  
11 section 12 of the Act shall not terminate.”.

12 **SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) WIRETAPPING.—Section 2516(1) of title 18,  
14 United States Code, is amended by adding at the end the  
15 following:

16 “(q) any violation of, or conspiracy to violate,  
17 the Export Administration Act of 1979.”.

18 (b) PAY OF UNDER SECRETARY.—Section 5314 of  
19 title 5, United States Code, is amended by striking  
20 “Under Secretary of Commerce for Export Administra-  
21 tion” and inserting “Under Secretary of Commerce for In-  
22 dustry and Security”.

23 (c) AMENDMENTS TO TITLE 31, UNITED STATES  
24 CODE.—

25 (1) Section 9703(a) of title 31, United States  
26 Code (as added by Public Law 102–393), is amend-

1 ed by striking “or the United States Coast Guard”  
2 and inserting “, the United States Coast Guard, or  
3 the Bureau of Industry and Security of the Depart-  
4 ment of Commerce”.

5 (2) Section 9703(a)(2)(B)(i) of title 31, United  
6 States Code (as added by Public Law 102–393), is  
7 amended—

8 (A) by striking “or” at the end of sub-  
9 clause (I);

10 (B) by inserting “or” at the end of sub-  
11 clause (II); and

12 (C) by adding at the end the following new  
13 subclause:

14 “(III) a violation of the Export  
15 Administration Act of 1979, or any  
16 regulation, license, or order issued  
17 under that Act;”.

18 (3) Section 9703(p)(1) of title 31, United  
19 States Code (as added by Public Law 102–393) is  
20 amended by adding at the end the following: “In ad-  
21 dition, for purposes of this section, the Bureau of  
22 Industry and Security of the Department of Com-  
23 merce shall be considered to be a Department of the  
24 Treasury law enforcement organization.”.

1 (d) CIVIL FORFEITURE PROCEEDINGS.—Section  
2 983(i)(2) of title 18, United States Code, is amended—

3 (1) by striking “or” at the end of subparagraph  
4 (D);

5 (2) by striking the period at the end of sub-  
6 paragraph (E) and inserting “; or”; and

7 (3) by adding at the end the following new sub-  
8 paragraph:

9 “(F) the Export Administration Act of  
10 1979.”.

11 (e) CLERICAL AMENDMENT.—Paragraph (3) of sec-  
12 tion 11A(k) of the Export Administration Act of 1979 (50  
13 U.S.C. App. 2410A(k)(3)) is amended—

14 (1) by redesignating that paragraph as para-  
15 graph (2); and

16 (2) by striking “paragraph (2)” and inserting  
17 “paragraph (1)”.

○